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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 COREAN BARNES,

9 Plaintiff,

10 v.

11 CHRISTINA RUSSELL, et al.,

12 Defendants.

Case No. C11-5275BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”) of
14 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 8) and Plaintiff
15 Corean Barnes’ (“Barnes”) objections to the R&R (Dkt. 9).


16 On May 2, 2011, Judge Creatura issued the R&R recommending that the Court deny
17 Barnes’ motion for leave to proceed in forma pauperis on his civil rights complaint under 42
18 U.S.C. § 1983. Dkt. 8. Judge Creatura found that Barnes was challenging the evidence used
19 at trial, which is an improper ground for an action under 42 U.S.C. § 1983. *Id.* at 1-2.

20 On May 12, 2011, Barnes filed objections. Dkt. 17. Barnes asserts that he not only
21 requests that his criminal conviction be overturned but he also requests civil damages under
22 18 U.S.C. § 2520 and Washington’s Privacy Act, RCW 9.73.010 - 9.73.260. Dkt. 9 at 1-2.
23 Barnes, however, fails to allege that his communications were recorded by a person acting
24 under color of state law, which is an element of 42 U.S.C. § 1983. Furthermore, Barnes fails
25 to allege that a violation of Washington’s Privacy Act is a violation of the rights, privileges,
26 or immunities secured by the Constitution, which is also an element of 42 U.S.C. § 1983.
27

Therefore, the Court finds that Barnes' objections are without merit. The Court having considered the R&R, Barnes' objections, and the remaining record, does hereby find and order as follows:

- (1) The R&R is **ADOPTED**;
- (2) Barnes' motion for leave to proceed in forma pauperis is **DENIED**; and
- (3) This action is **DISMISSED without prejudice**.

DATED this 7th day of June, 2011.


BENJAMIN H. SETTLE
United States District Judge